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Crl.M.P.No.12184 of 2024 in Crl.A.No.1015 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.12184 of 2024
in Crl.A.No.1015 of 2024

Abdul Rajak

... Petitioner

Vs.

Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai-600 090.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure/430(1) of BNSS, to suspend the sentence passed in C.C.No.123 of 2018 order dated 22.05.2023 on the file of I Addl. Special Court for Exclusive Trial of Cases under EC & NDPS Act, Chennai and enlarge the petitioner on bail.

For Petitioner : Mr.T.S.Sasi Kumar

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor



ORDER

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The petitioner was convicted *vide* judgment, dated 22.05.2023 in C.C.No.123 of 2018 by the learned I Additional Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai (Trial Court) and sentenced to undergo 12 years Rigorous Imprisonment and to pay a fine of Rs.1,50,000/- in default to undergo six months Rigorous Imprisonment for offence under Section 8(c) r/w 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (In short 'The Act'). Aggrieved over the same, the present criminal appeal and the suspension of sentence.

2.The learned counsel for the petitioner submitted that the petitioner is projected as though he along with A1 involved in procuring and trafficking Ganja from Annapuram in East Godhavari District of Andhra Pradesh to Trichirapalli through Ashok Leyland lorry bearing Reg.No.TN-67-F-4579. On 07.05.2018, the said lorry was intercepted near Toll Plaza and during search, it was found that in the lorry along with 350 bags of Alumina Hydrate, 14 gunny bags containing ganja concealed. On the basis



of the statement under Section 67 of the Act, the petitioner was arrested and remanded. The admitted position is that from the petitioner, no seizure made and the petitioner was sitting in the cabin of lorry and the consignment was behind. The petitioner as Cleaner has got no control of the lorry or no role in loading and unloading any consignment. His primary work is to maintain and repair the lorry if required. Added to it, on the confession of the petitioner, no recovery made. The Hon'ble Apex Court in the case of “*Tofan Singh v. State of Tamil Nadu* reported in (2021) 4 *Supreme Court Cases I*” clearly held that statement under Section 67 of the Act is limited to the extent of any recovery akin to Section 27 of the Indian Evidence Act, nothing more. Apart from it, no other material against the petitioner. He further submitted that the petitioner from the date of his arrest on 07.05.2018 is in prison for the past six years and five months which is almost completion of 50% of the period of sentence and default sentence. The petitioner is a permanent resident of Virudhunagar and he is a victim of circumstances.



3.He further submitted that A1 was granted suspension of sentence by this Court in Crl.M.P.No.2556 of 2024 in Crl.A.No.712 of 2023 on 02.07.2024 and the petitioner is also similarly placed as regards the period of detention. The petitioner hails from poor family and he is the only breadwinner. After his incarceration, his family is suffering and he has got no source of income. In view of the same, the learned counsel for the petitioner submits that no onerous condition of payment of fine amount can be insisted as that of A1. Otherwise, it would amount to denial of his bail.

4.The learned Special Public Prosecutor appearing for the respondent/Narcotic Control Bureau (NCB) filed counter submitting that on 07.05.2018, the respondent was keeping watch near Chennai Kallikuppam Toll Plaza at about 03.00 p.m. At that time, on suspicion, they intercepted Ashok Leyland lorry bearing Reg.No.TN-67-F-4579 and questioned the driver of the vehicle/A1 and its cleaner, the petitioner herein. Since they gave contradictory statements, on search of the vehicle, 14 gunny bags of ganja weighing 425.820 kgs a huge commercial quantity found concealed beneath Alumina Hydrate of 350 gunny bags. During enquiry, it was found



that ganja was loaded in Annapuram and it was intended to be delivered to one Pandi in Trichirapalli and later to Sri Lanka. Hence, the petitioner is part of the international gang who conspired with other accused in smuggling and transporting ganja. He further submitted that except PW2, all other five witnesses are from NCB and on getting information, the NCB officials informed the superior officer and complied with the statutory conditions under Sections 42, 50, 52 and 57 of the Act. All the witnesses deposed about the petitioner's involvement with the other accused. In this case, PW2/Chemical Examiner gave report confirming the consignment was ganja. During trial, PW1 to PW6 examined and Exs.P1 to P94 marked and MO1 to MO45 marked. The Trial Court on the evidence produced had rightly convicted the petitioner.

5.Considering the rival submissions and on perusal of the materials, it is seen that this Court already granted suspension of sentence to A1 who was also arrested on the same day when the petitioner was arrested. Hence, the similar benefit to be extended to the petitioner. In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is



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suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the Trial Court.

6.Further, the petitioner shall appear before the Trial Court once in three months commencing from November 2024 on the first working day at 10.30 a.m till the disposal of the criminal appeal. Accordingly, this Miscellaneous Petition is ordered.

24.10.2024

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To
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- 1.The I Additional Special Judge,
I Additional Special Court for Exclusive Trial of Cases under NDPS Act,
Chennai.
- 2.The Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
- 3.The Central Prison-I,
Chennai.
- 4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR., J.

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